

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

FILED

2014 JUN 12 A 9 39

CLERK US DISTRICT COURT
ALEXANDRIA, VIRGINIA

DELTA SCIENTIFIC CORPORATION)

Plaintiff,)

vs.)

**MASS. ELECTRIC CONSTRUCTION
COMPANY**)

Defendant.)

CIVIL ACTION NO.

*1:14cv722
AJT/JFA*

COMPLAINT

Plaintiff, by and through counsel, Martin R. Mann, Esq., for its Complaint against the Defendant, alleges and states as follows:

I. INTRODUCTION

This is a suit for damages arising out a breach of contract by the Defendant, *Mass. Electric Construction Company*.

II. JURISDICTION

1. This Court has diversity jurisdiction pursuant to 28 U.S.C. §1332 in that the matter in controversy exceeds Seventy Five Thousand Dollars (\$75,000.00), exclusive of interest and costs and the Plaintiff and Defendant are citizens of different states as defined in 28 U.S.C. §1332 (c).

III. VENUE

2. Venue is proper in this district pursuant to 28 U.S.C. §1391 in that the Virginia office of the Plaintiff is located in this district.

IV. PARTIES

3. Plaintiff, DELTA SCIENTIFIC CORPORATION, is a corporation incorporated in California with its headquarters in Palmdale, California, having

been domesticated in the Commonwealth of Virginia at all times pertinent hereto and with its office located in Fredericksburg, Virginia.

4. Defendant, MASS. ELECTRIC CONSTRUCTION COMPANY, is a corporation originally incorporated in Boston, Massachusetts, with its corporate district offices for the administration and management of the subject contracts (described below) located in Irving, Texas, and Washington, D.C.

V. FACTS

5. *The Plaintiff (as Subcontractor) and Tompkins Builders, Inc. (as Contractor)* entered into an Agreement on February 9, 2010 (hereinafter referred to as "the Agreement") for the upgrade and enlargement of kiosks and related items under a project known as the "Rehabilitation of Red Line Metro System- Dupont Circle to Silver Spring Station." A true copy of the Agreement and attachments are attached hereto as "Exhibit 1."

6. By reason of an Assignment of Subcontract dated August 31, 2012, Tompkins Builders, Inc., as Assignor, assigned and transferred all of the rights, title and interest held by Tompkins and existing under the terms of the Agreement to Mass. Electric Construction Company as Assignee. A true copy of the Assignment of Subcontract is attached hereto as "Exhibit 2."

7. Both prior to and following the Assignment of Subcontract, the parties entered into four (4) Subcontract Change Orders, one dated January 12, 2011, between Tompkins and the Plaintiff (attached hereto as "Exhibit 3"), one dated July 24, 2012, between Tompkins and the Plaintiff (attached hereto as "Exhibit 4"), one dated September 26, 2012 between Tompkins and the Plaintiff (attached

hereto as "Exhibit 5) and one dated December 3, 2012, between the Plaintiff and Defendant (attached hereto as "Exhibit 6").

8. Pursuant to the requirements contained in the Agreement, on at least seventeen (17) different occasions the Plaintiff has requested payment by submitting an "Application and Certification for Payment, AIA Document G702."

9. There exists a balance due to the Plaintiff under the Agreement in the full amount of Three Hundred Thirteen Thousand Five Hundred Thirty-seven and 76/100 Dollars (\$313,537.76), all as set forth in a Statement of Account attached hereto, with accompanying invoices, as "Exhibit 7".

10. Plaintiff has supplied all of the materials and fully performed all of the work, labor and services in a timely manner as set forth in the Agreement

11. Defendant has breached the Agreement by refusing to pay the invoiced balance due to the Plaintiff, and finance charges continue to accrue on the unpaid balance.

REQUESTED RELIEF

WHEREFORE, Plaintiff requests that this Court enter judgment against the Defendant as follows:

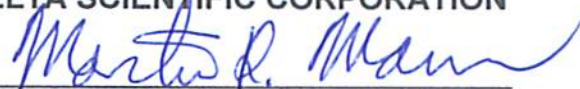
1. For actual damages in the full amount of Three Hundred Thirteen Thousand Five Hundred Thirty-seven and 76/100 Dollars (\$313,537.76).

2. Interest, costs and reasonable attorney's fees to the extent allowed under the Agreement and by law;


3. Such other and further relief as the Court deems appropriate.

DELTA SCIENTIFIC CORPORATION

By: _____



Counsel



Martin R. Mann, Esq. Va. Bar No. 12741

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